



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2004

Ms. Lynn Rossi Scott
Bracewell & Patterson, L.L.P.
500 North Akard Street, Suite 4000
Dallas, Texas 75201

OR2004-9938

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213560.

The Azle Independent School District (the "district"), which you represent, received a request for the bid tabulation results relating to the high school track resurfacing project. You claim that the information is excepted from disclosure under section 552.104 of the Government Code. Furthermore, pursuant to section 552.305(d) of the Government Code, you have notified six interested third parties of the request and of their opportunity to submit comments to this office.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. See Open Records Decision No. 592 (1991). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990). Generally, section 552.104 does not except information relating to competitive bidding situations once a contract has been executed. ORD 541.

¹ The interested third parties sent notice pursuant to section 552.305 are the following: Defargo; Turbo Link International, Inc.; A-1 Track; Track Masters, Inc.; Fisher Tracks; and Vibra-Whirl, Ltd.

You state that the district is “currently negotiating a contract with the successful proposer, but has not yet executed a final contract.” You further explain that if negotiations were to break down, release of the submitted information would negatively impact the district’s negotiating position with other vendors. Based on your arguments and our review of the submitted information, we conclude that the information is excepted from disclosure based on section 552.104 until such time as the contract is executed.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 213560

Enc. Submitted documents

c: Mr. Jim Fink
Hellas Construction, Inc.
12710 Research Boulevard, Suite 240
Austin, Texas 78759
(w/o enclosures)

Mr. Bret Allen
Track Masters, Inc.
1380 North U.S. Highway 287, Suite 102
Mansfield, Texas 76063
(w/o enclosures)

Mr. Bill Teten
A-1 Track
8301 H Street
Omaha, Nebraska 68127
(w/o enclosures)

Mr. Nathan Matthews
Turbo Link International, Inc.
908 Grand Central
Clearwater, Florida 33756
(w/o enclosures)

Mr. Rick Ediger
Defargo
1 Chisholm Trail
Old Town Square, Suite 3200
Round Rock, Texas 78681
(w/o enclosures)

Mr. Lanny Garner
Vibra-Whirl, Ltd.
P.O. Box 966
Panhandle, Texas 79068
(w/o enclosures)

Mr. Jordan Fisher
Fisher Tracks
1192 235th Street
Boone, Iowa 50036
(w/o enclosures)